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10/651,205	08/29/2003	Steven J. Johnson	45088	7628

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EXAMINER

RAMIREZ, RAMON O

ART UNIT PAPER NUMBER

3632

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/651,205
Filing Date: August 29, 2003
Appellant(s): JOHNSON ET AL.

Marcus R. Mickney
For Appellant

EXAMINER'S ANSWER

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This is in response to the appeal brief filed April 8, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of the Claimed Subject Matter*

The summary of claimed subject matter contained in the brief is correct.

(6) *Grounds of Rejection on Appeal*

The appellant's statement of the grounds of rejection in the brief is correct.

(7) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) *Prior Art of Record*

4,967,990	RINDERER	11-1990
4,050,603	HARRIS et al.	09-1977
5,040,316	FAST	08-1991

(9) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3, 5 and 7 stand rejected under 35 U.S.C. 102(b) as being anticipated by Rinderer (Pat No 4,967,990).

The patent to Rinderer shows a brace assembly for supporting an outlet box to supports, comprising a brace (21) having a base and mounting surfaces (51) extending from the base at angle greater than 90 degree (see Fig 2). The mounting surfaces having a perpendicular extending flange (53) having a hole for receiving a fastener to secure the brace to the supports.

Claim 2 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rinderer.

To make the angle at which the mounting surfaces (51) extend from the base at 94 degree is considered to be an obvious matter of engineering choice, or mechanical expedient in the absent of unexpected results. Rinderer clearly shows it to be more than 90 degrees.

Claims 4, 8-16, 20, 21, 29 and 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rinderer in view of Harris et al. (Pat No 4,050,603).

The patent to Harris et al. shows a brace assembly for securing an outlet box to supports, comprising telescopic adjustable members each having a mounting surface with a fastener hole and prongs to further secure the brace to the supports.

It would have been obvious to one skilled in the art at the time the invention was made to have made the brace assembly shown by Rinderer with telescopic brace members and the mounting surface with prongs to facilitate the use of the device. The telescopic brace members would permit easier storage, transportation, handling and more versatility of the brace member (since it can adjust its length to different distance between the supports). The prongs would provide for an additional fastening means of the brace to the supports. As explained above the angle at which the mounting surfaces are formed is considered a matter of engineering choice.

Claim 6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rinderer in view of Fast (Pat No 5,040,316).

The patent to Fast shows the use of score lines to remove a portion to adjust to a desired length. It would have been obvious to one skilled in the art at the time the invention was made to have provided the device shown by Rinderer with score lines to adjust the length of the mounting surfaces to facilitate the use of the device and its versatility.

Claims 18-21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rinderer in view of Harris et al. and Fast.

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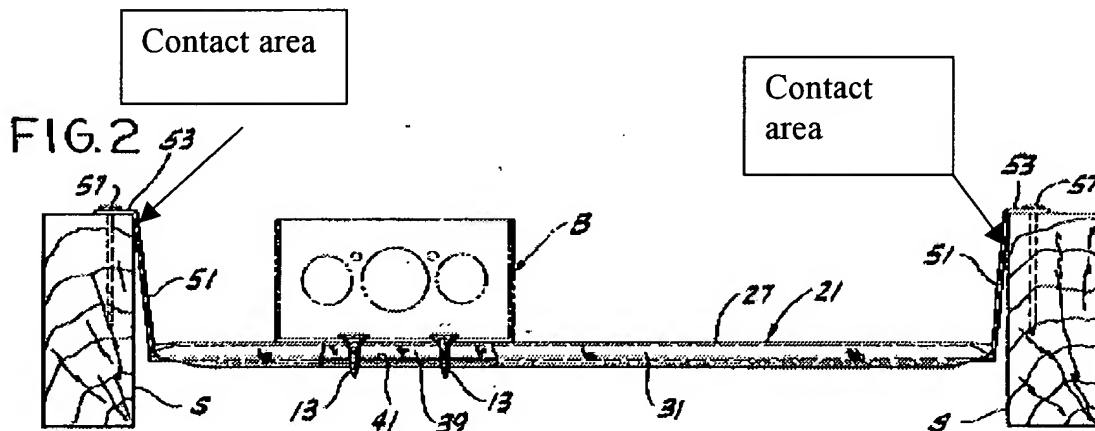
The patent to Fast shows the use of score lines to remove a portion to adjust to a desired length. It would have been obvious to one skilled in the art at the time the invention was made to have provided the device shown by the combination set forth above with score lines to adjust the length of the mounting surfaces to facilitate the use of the device and its versatility

(10) *Response to Argument*

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Appellant's Part A (1) arguments are directed to independent claim 1. Appellant argues that the patent to Rinderer does not have a 'compression fit', and that the mounting surfaces of elements 51 do not contact the supports S.

However, claim 1 states that the instant mounting surfaces are adapted to create a compression fit. It is the examiner position that Rinderer does provide a compression fit, and that the strength of such fit would depend from the distance between the studs, the smaller the distance the stronger would be the fit. Further, a review of Rinderer figure 4 shows, contrary to Appellant's arguments, a contact area between the extensions 51 and the stud S as shown below.



Appellant's Part A (2) arguments are directed to claims 3, 5 and 7. Appellant argues that Rinderer does not show a fastener hole. The examiner believes Rinderer shows such

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element as disclosed above where a fastener (57) is shown securing a flange (53) to the stud (S). Appellant repeats the above argument regarding the compression fit, which has already been addressed by the examiner.

Appellant's Part B arguments are directed to claims 2, 4, 8-16, 20, 21, 29 and 30.

Appellant repeats again the argument about the compression fit, which as mentioned before has already being addressed by the examiner and will not be repeated.

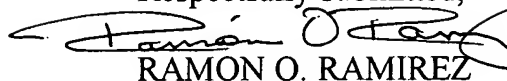
Appellant list a series of limitations, for example, fastener holes, prongs, flanges, mounting surfaces extending approximately 94 degrees as not being anticipated by the patents used in the rejection. Appellant does not elaborate. However, all these limitations are shown by the references as explained in the rejection of the claims.

Appellant argues that the patent to Fast is in non-analogous art. The examiner disagrees since the patent to Fast is drawn to a bracket, and for adjusting the length of it. It is the examiner's position that one skilled in the art knowing the patent to Rinderer would combine the teachings of Fast to further increase the versatility of the device.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,



RAMON O. RAMIREZ

Primary Examiner

Art Unit 3632

ROR

May 26, 2005

Conferees

Leslie Braun



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